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GREEN MOUNTAIN, INC.

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 KATHLEEN SMITH, on behalf of herself
and all others similarly situated,

12 **Plaintiff,**

13 v.

14 KEURIG GREEN MOUNTAIN, INC.; and
15 DOES 1 through 100, inclusive,

16 **Defendants.**

Case No.

[Removal from the Superior Court of the
State of California in and for the County
of Alameda, Case No. RG18922722]

**NOTICE OF REMOVAL OF CLASS
ACTION BY DEFENDANT KEURIG
GREEN MOUNTAIN, INC.**

[28 U.S.C. §§ 1332(d) AND 1441]

[Filed Concurrently with
Appendix of State
Court Pleadings and Documents;
Certificate of Interested
Parties; and Civil Cover Sheet]

Complaint filed: September 28, 2018
Trial Date: None Set

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TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFF KATHLEEN SMITH AND HER COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C §§ 1441, 1446 and 1453, and in accordance with 28 U.S.C. §§ 1332 and 1711, defendant Keurig Green Mountain, Inc. (“Defendant” or “Keurig”) hereby removes this action—with reservation of all defenses and rights—from the Superior Court of the State of California for the County of Alameda, Case No. RG18922722, to the United States District Court for the Northern District of California. Removal is proper on the following grounds:

BACKGROUND

1. Plaintiff Kathleen Smith (“Plaintiff”), individually and on behalf of others similarly situated, filed a Class Action Complaint (“Complaint”) against Keurig in the Superior Court of the State of California, County of Alameda, Case No. RG18922722, on September 28, 2018. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders served upon Defendant as of the date of this filing are attached to the concurrently-filed Appendix of State Court Pleadings and Documents (“Appendix”).

2. Keurig is the only named defendant in the Complaint.

3. Plaintiff asserts five causes of action against Keurig on behalf of herself and those similarly situated: Breach of Express Warranty (Compl., ¶¶ 41-49); violation of the California Consumer Legal Remedies Act, Cal Civ. Code § 1750 et seq. (“CLRA”) (Compl., ¶¶ 50-56); violation of the “fraudulent” prong of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”) (Compl., ¶¶ 57-62); violation of the “unlawful” prong of the UCL (Compl., ¶¶ 63-71); and violation of the “unfair” prong of the UCL (Compl., ¶¶ 72-81).

GROUND FOR REMOVAL: CLASS ACTION FAIRNESS ACT

4. Removal is proper pursuant to 28 U.S.C. §§ 1441, 1446 and 1453 because this Court has subject matter jurisdiction over this action and all claims asserted against

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1 Defendant pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C.
2 §1332(d).

3 5. CAFA reflects Congress’ intent to have federal courts adjudicate substantial
4 class action suits brought against out-of-state defendants. *See Std. Fire Ins. Co. v.*
5 *Knowles*, 568 U.S. 588, 595 (2013) (observing that “CAFA’s primary objective [is] . . .
6 ensuring ‘Federal court consideration of interstate cases of national importance’”) (citation omitted).

7
8 6. “Under CAFA, federal courts have original diversity jurisdiction over class
9 actions where the aggregate amount in controversy exceeds \$5,000,000, where the
10 putative class size exceeds 100 persons, and where, among other possibilities, ‘any
11 member of a class of plaintiffs is a citizen of a State different from any defendant.’” *King*
12 *v. Great Am. Chicken Corp.*, No. 18-cv-55911, 2018 U.S. App. LEXIS 25300, at *6-7
13 (9th Cir. Sept. 6, 2018); *see also* 28 U.S.C. §§ 1332(d)(2)(A).

14 7. This action is a civil class action over which this Court also has original
15 jurisdiction under 28 U.S.C. § 1332(d).

16 **A. Defendant Satisfies Its Burden on Removal.**

17 8. In removing an action to federal court under CAFA, a defendant is not
18 required to submit evidence that the jurisdictional elements are satisfied. To the contrary,
19 a “defendant’s notice of removal need include only a plausible allegation” that the CAFA
20 requirements are satisfied. *See Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct.
21 547, 554 (2014); *see also Baretich v. Everett Fin., Inc.*, No. 18-cv-1327, 2018 WL
22 4579857, 2018 U.S. Dist. LEXIS 164609, at *6 (S.D. Cal. Sept. 25, 2018) (observing that
23 “[d]efendant provided a ‘short and plain statement of the grounds for removal’ as
24 required, and was not obligated to submit evidence in support of its notice of removal . . .
25 there is no obligation on Defendant to submit any declarations or ‘summary-judgment
26 type evidence’ in support of” its allegations that jurisdictional requirements under CAFA
27 are satisfied for purposes of removal) (citation omitted).

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1 9. Additionally, “under CAFA, the jurisdictional allegations in the complaint
2 can be taken as a sufficient basis, on their own, to resolve questions of jurisdiction where
3 no party challenges the allegations.” *Mondragon v. Capital One Auto Fin.*, 736 F. 3d
4 880, 886 (9th Cir. 2013).

5 10. Defendant satisfies its burden. Specifically, while Defendant expressly
6 reserves all of its rights, and for purposes of meeting the jurisdictional requirements for
7 removal only, Defendant submits that this action meets all requirements for federal
8 jurisdiction under CAFA.

9 **B. This Case is a Putative Class Action.**

10 11. CAFA applies “to any class action before or after the entry of a class
11 certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8).

12 12. This case is a putative “class action” under CAFA because it was brought
13 under a state statute or rule, namely California Code of Civil Procedure § 382, authorizing
14 an action to be brought by one or more representative persons as a class action. *See* 28
15 U.S.C. § 1332(d)(1)(B); *see also* Compl., ¶ 34 (“Plaintiff brings this suit individually and
16 as a class action pursuant to [Cal. Code Civ. Proc.] § 382 on behalf of herself and the
17 following Class of similarly situated individuals . . .”).

18 **C. The Proposed Class Consists of More Than 100 Members.**

19 13. Plaintiff asserts that she “brings this suit . . . as a class action pursuant to
20 [Cal. Code Civ. Proc.] § 382” and seeks to represent a class of “[a]ll persons who
21 purchased [Keurig’s] Products¹ for personal, family, or household purposes in California
22 (either directly or through an agent) during the applicable period of statute of limitations.”
23 *See* Compl., ¶ 34.

24 14. Plaintiff asserts that she “is unable to state the precise number of potential
25 members of the proposed class because that information is in the possession of
26 Defendants. However, the number of class Members is so numerous that joinder would
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28 ¹ The Complaint defines the “Products” as “plastic single serve pods that contain coffee and that are
labeled as ‘recyclable’”, and that are “advertised, marketed, and sold” by Keurig. *See* Compl., ¶ 2.

1 be impracticable. The exact size of the Class and the identity of its members will be
2 readily ascertainable from the business records of Defendants and Defendants' retailers
3 as well as Class members' own records and evidence." *See id.*, ¶ 35.

4 15. On information and belief, Keurig avers that the purported class contains
5 well over 100 putative members.

6 16. Accordingly, while Defendant denies that class treatment is permissible or
7 appropriate, for jurisdictional purposes, the proposed class consists of more than 100
8 members.

9 **D. Minimal Diversity Exists Because Defendant and Plaintiff (and other**
10 **Putative Class Members) Are Not Citizens of the Same State.**

11 17. The minimum diversity of citizenship criteria under CAFA requires that the
12 plaintiff or any member of the putative class is a citizen of a state that is different from
13 that of any defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

14 18. Plaintiff "is a resident of Lafayette, California." *See* Compl., ¶ 6.

15 19. The putative class also necessarily includes individuals who are citizens of
16 California. *See id.*, ¶ 34 (defining the class as "all persons who purchased the Products
17 for personal, family, or household purposes *in California*") (emphasis added).

18 20. Plaintiff alleges Keurig to be "a Delaware corporation, with its principal
19 place of business in Waterbury, Vermont." *See id.*, ¶ 7. Plaintiff is correct that Keurig
20 is incorporated in Delaware, but mistaken as to Keurig's principal place of business.
21 Keurig's principal place of business and corporate headquarters is located in, at all
22 relevant times has been located in, Burlington, Massachusetts.

23 21. Accordingly, Keurig is and has been at all relevant times a citizen of the
24 states of Delaware and Massachusetts. *See* 28 U.S.C. § 1332(c)(1) ("[A] corporation shall
25 be deemed to be a citizen of any State by which it has been incorporated and of the State
26 where it has its principal place of business."); *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81
27 (recognizing that a corporation's principal place of business is where its "high level
28

1 officers direct, control, and coordinate” its operations and will “typically be found at its
2 corporate headquarters”).

3 22. Defendant is not and has never been a citizen of the State of California.

4 23. Defendant is not aware that any Doe Defendants have been served with a
5 copy of the Summons and Complaint or been named as parties to the state court action.
6 The Court may disregard unidentified Doe Defendants for purposes of determining
7 whether jurisdiction exists. *See McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th
8 Cir. 1987).

9 24. Because the proposed class representative – to say nothing of the putative
10 class members – is a citizen of a state different from that of Defendant, the minimum
11 diversity requirement is satisfied. *See* 28 U.S.C. § 1332(d)(2)(A).

12 **E. The Amount Placed in Controversy by the Class Claims Exceeds \$5 million.**

13 25. The inquiry for determining if the amount in controversy requirement is
14 satisfied turns upon what the plaintiff puts in controversy, not what the defendant may
15 ultimately owe. *See Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal.
16 2005).

17 26. Although Keurig denies that Plaintiff’s claims have any merit, Keurig avers,
18 for the purposes of meeting the jurisdictional requirements for removal only, that the
19 requested monetary recovery exceeds \$5 million.

20 27. While the Complaint does not quantify a sum certain of damages sought, it
21 asks for various forms of relief, including injunctive relief, requesting a “corrective
22 advertising and information campaign”, restitution, disgorgement, compensatory
23 damages, punitive damages, and reasonable attorney’s fees and costs. (*See* Compl., p. 23
24 (“Prayer”).)

25 28. In class actions, “where the ‘potential cost to defendants of complying with
26 [an] injunction exceeds [the jurisdictional minimum],’ then the cost of compliance is ‘the
27 amount in controversy for jurisdictional purposes.’” *Fefferman v. Dr Pepper Snapple*
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1 *Grp., Inc.*, No. 13-cv-00160, 2013 U.S. Dist. LEXIS 193961, at *8 (S.D. Cal. Mar. 12,
2 2013) (citation omitted).

3 29. The cost to Keurig of complying with the requested injunction would
4 significantly exceed \$5 million. These costs include, but are not limited to, lost sales of
5 the Products (which totaled approximately \$4.1 million during the putative class period),
6 approximately \$9 million in lid inventory that would be rendered obsolete by the
7 requested injunction, more than \$1 million in lost value for the plates used to print the
8 Products' lids (which would be rendered unusable by the proposed injunction), a
9 minimum of \$400,000 in recall costs (excluding penalties and vendor chargebacks owed
10 to retailers, which would increase recall costs), more than \$350,000 in Product inventory
11 that would have to be destroyed, and additional sums for the corrective advertising
12 requested in the Complaint.

13 30. Additionally, attorneys' fees expected to be requested by the Plaintiff are
14 included in determining the amount in controversy. *See, e.g., Fefferman*, 2013 U.S. Dist.
15 LEXIS 193961, at *7, *9 – 10.

16 31. Although the amount of attorneys' fees that Plaintiff or the putative class
17 might request is unknown at this point, it is likely to be substantial.

18 32. Even apart from attorneys' fees, the costs of compliance with the requested
19 injunction would be, at a minimum, in excess of \$5 million. Accordingly, this action
20 meets the jurisdictional minimum amount in controversy, and removal to this Court is
21 proper under CAFA.

22 **F. TIMELINESS OF REMOVAL**

23 33. The Proof of Service of Summons indicates that the Complaint was served
24 by mail to Keurig's Waterbury, Vermont, facility with a return acknowledgement of
25 receipt, pursuant to Cal. Code Civ. Proc. § 415.40, on October 1, 2018. Under California
26 law, "[s]ervice of a summons by this form of mail is deemed complete on the 10th day
27 after such mailing." *See id.* Accordingly, service was complete on or about October 11,
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1 2018. *See also Student A. v. Metcho*, 710 F. Supp. 267, 268 (N.D. Cal. 1989) (recognizing
2 that “state law determines when service is made”) (citations omitted).

3 34. Because Defendant filed this notice of removal within thirty days of October
4 11, 2018, this notice of removal is timely. This is because the notice of removal has been
5 “filed within thirty days after receipt by the defendant, through service or otherwise, of a
6 copy of an amended pleading, motion, order or other paper from which it may first be
7 ascertained that the case is one which is or has become removable.” *See* 28 U.S.C. §
8 1446(b)(3); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344,
9 347-48 (1999) (“[W]e hold that a named defendant’s time to remove is triggered by
10 simultaneous service of the summons and complaint, or receipt of the complaint, ‘through
11 service or otherwise,’ after and apart from service of the summons, but not by mere receipt
12 of the complaint unattended by any formal service.”).

13 **THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

14 35. Based on the foregoing facts and allegations, this Court has original
15 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because:

- 16 A. This is a civil action that is a class action;
- 17 B. This action involves a putative class of more than 100 class
18 members;
- 19 C. The amount in controversy exceeds \$5 million, exclusive of interest
20 and costs; and
- 21 D. Plaintiff and other putative class members are citizens of a state that
22 is different from the states in which Keurig may be deemed a citizen.

23 Accordingly, removal of this action is proper under 28 U.S.C. § 1441.

24 36. The United States District Court for the Northern District of California is the
25 appropriate venue for removal pursuant to 28 U.S.C. § 1441(a) because it embraces the
26 County of Alameda, where Plaintiff originally filed the Complaint. *See* 28 U.S.C. § 84(a).

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1 37. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of
2 Removal is being provided to all adverse parties, and a copy of this Notice will be filed
3 with the Clerk of the Superior Court of the State of California for the County of Alameda.
4 The proof of service of this Notice to Adverse Party of Removal will be filed with this
5 Court.

6 38. Defendant denies the allegations contained in Plaintiffs' Complaint and files
7 this Notice of Removal without waiving any applicable defenses, objections or rights.

8 Respectfully submitted,

9 DATED: November 2, 2018

DORSEY & WHITNEY LLP

11 By: /s/ Kent J. Schmidt
12 KENT J. SCHMIDT
NAVDEEP K. SINGH

13 Attorneys for Defendant KEURIG
14 GREEN MOUNTAIN, INC.